FILED
MAY 2 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(3)

CASE NO. 06-1120

In The

Supreme Court of the United States

artlett- Jay Hanford, Petitioner

v.

Aine Safety and Health Administration,

Respondent(s)

On Petition For Writ of Certiorari
United States Court of Appeal
for the Federal Circuit
Washington D. C. 20439

PETITION FOR REHEARING

Bartlett-Jay: Hanford
P.O. Box 918
San Andreas, California 95249
(209) 754-1752

BEST AVAILABLE COPY

Page

TABLE OF CONTENTS

INTRODUCTION..... 1-3

REASONS FOR GRANTING WRIT 3

I PETITIONER FILED AN AFFIDAVIT OF TRESPASS IN SUPPORT OF OPPOSITION TO DISMISS 3

II COMPLAINT IN COURT of CLAIMS WRITTEN AS AFFIDAVIT OF NEGATIVE AVERMENT; PETITIONER HAD STIPULATED AGREEMENT AS TO FACTS of CASE INCORPORATRION 04-504L 12

III- DUE PROCESS, FOURTH AMENDMENT CLAIMS, SUPREMACY CLAUSE CLAIMS DISMISSED BY COURT OF CLAIMS VALID FOR THE SUPREME COURT TO REVIEW. 15

CONCLUSION 14

TABLE OF AUTHORITIES

Cases	Page
Hishon King v Spalding 457 US 69, 73 (1984).	4
U.S. vs. Kis.658 F2d. 526, 536	5
Cleary vs. Kincaid, 23 Idaho, 769, 131 p. 1117, 1118	6
Strange vs. City of Cleavland, 94 Ohio St.377, 114 N.E. 261, 262	6
Leger v Warren 82 Ohio St. 500. 57 N. E. 506, 508 (1900)	6
Haines v Kemer 404 U.S. 519, 522.	10
US v Etheverrey 230 F.2nd 193.	7, 12
Pennsylvania Coal Co. v Mahon. 260 U.S. 414.	12
Summa Corp. v. California, 466 U.S. 198 (1984). http://laws.findlaw.com/8th/973861p.html U.S. 8th Circuit Court of Appeals *SD Mining Assoc. v Jack Cole*	13
Marshall v Waite 628 F.2nd 1255 (1980)	14
Byers v US 273 US 313, 317 (1921)	14
CONSTITUTIONAL PROVISIONS	
U.S. CONSTITUTION AMENDMENT I	2
U.S. CONSTITUTION AMENDMENT IV	9, 14,15
U.S. CONSTITUTION AMENDMENT V	12,13
ARTICLE IV SECTION II	14

TABLE OF AUTHORITES -Continued

		Page
STATUTES		
TITLE 42 USC 1986		1
TITLE 28 USC 372 (c)		3
TITLE 4 USC 4		8
TITLE 28 CHAPTER 85 USC 1359		8
RULES		
CALIFORNIA PENAL CODE	519	8
FEDERAL RULES OF EVIDENCE	602	3, 4, 10, 14
JUDICIAL NOTICE	201 (b)	5

INTRODUCTION

The Mine Safety and Health Administration (MSHA) planned a surprise attack against petitioner, which was averted by the death of the inspector from a heart attack. Upon learning of their sinister scheme, the secretary of labor, undersecretaries of MSHA and local field agents where served an issue of law by USPS green card service that MSHA must resolve before coming against petitioner. Also, constructive notice was given to Key officials they were violating petitioners inherent rights. MSHA ignored petitioner's due process rights and stayed in the tumult joining with the sheriff to deny petitioner explosives essential for the operation of the mine. Having Title 42 USC 1986 knowledge of the crimes by a memorandum of law served MSHA, they should have waited for a more opportune time and allowed the permit to issue when a valid legal process either an injunction or forth amendment warrant could be obtained, Instead they complicated the permit process making the permit contingent upon inspection of the mine as an act of extortion. MSHA caused 147 day delay in the ability to purchase explosives, which was a de-facto ban on mining that goes against the congressional intent of congress, which permits and

encourages mining. Petitioner was a sole miner, operating on a patented mining claim and was a INTRASTATE of explosives. There was no effectuation of a substantial federal purpose for MSHA to deny me the tools of the trade. The action of this agency was willful having knowledge prior to coming against petitioner. Without due process of law petitioner was injured by loss of his liberty, liberty, mining, livelihood right without proper legal process of an injunction or four amendment warrant by MSHA. It appears explosives rather than being a tool for the miner is a ruse to deny petitioner his inherent rights and the court rules the police power of MSHA is absolute and ratifies this administrative agency is answerable to NO ONE against the first amendment right to petition the government for their participation in a extortion plot to deny petitioner his vested mining right established by driving over 3000 feet of tunnel and 600 feet of shafts and raises over nine years. The rehearing brings to light the Disability of Judge, Hewitt which focuses on an affidavit filed with the motion to dismiss and the prejudice of the judge allowing the record to be falsified through the content of un-sworn testimony of the U.S Attorney in his motions and relied upon that information in the motion to file the Judges opinion not supported by facts or evidence.

The U.S. Attorney having no personal knowledge to testify; against the basic rule of fairness, which should have been afforded petitioner in violation of federal rules of evidence 602. No counter affidavits were filed by the U.S. Attorney. Further disability Title 28 372 (c) was exhibited through the denial of Petitioner's timely Rejection (Rehearing) to vacate the opinion of Judge Hewitt on grounds of fraud denying Petitioner access to the court. A partial text appears in Petitioner's Appendix.

REASONS FOR GRANTING THE WRIT

I PETITIONER FILED AN AFFIDAVIT OF TRESPASS IN SUPPORT OF OPPOSITION TO DISMISS

Petitioner filed an affidavit. It is a criminal offense to file a false affidavit, I noticed I am not under arrest for filing a false affidavit, so it is clear that my affidavits are true, correct, and accurate; an affidavit is a statement of truth. Was Judge Hewitt prejudice toward petitioner deliberately denying the truth causing injury to petitioner through falsifying the record to take advantage of my un-represented status. When the U.S. Attorney whom a motion

is opposed fi[illegible]no counter affidavit, the trial court is entitled to accept the allegations of the petitioner in this instant case as true. The allegations of the petitioners affidavit must be construed as true nullifying the testimony made in the U.S. Attorneys motion, which are a sham due to lack of personal knowledge in violation of evidence code 602 causing Judge Hewitts opinion to be stricken. Without a counter affidavit by the U.S. attorney in opposition to the affidavit of Tresspass it must be assumed the Mine Safety and Health Administration cannot dispute the truth of statements in the affidavit or in this case cannot controvert them.

The judges oath is the highest oath, a solem promissary contract that is a contract (in law) and any breach of this obligation of fiduciary relationship causes the liability of **"fiduciary debt"** to attach to Judge Hewitt. When the judge received the Affidavit of Trespass this was imputed knowledge, which the judge was not to ignore. Jurisdiction by Judge Hewitt , even by presumption, is destroyed and there can be no claim for immunity in the willful violation of the truth concerning petitioners Affidavit of Trespass filed in opposition to the motion to dismiss. The criminal/civil acts of MSHA must be taken as true for lack

of a counter affidavit and no one with personal knowledge allowed to enter evidence into record, the Court of Claims may not dissmiss for failure to state a claim unless it appears that the petitioner can prove no set of facts in support of the claim which would entitle him or her to relief. *Hishon King v Spalding* 457 US 69, 73 (1984). Without the prejudice and disability of Judge Hewitt ignoring the truth, the case incorporation 04-504L (ECH), could not be dismissed. Judge Hewitt took advantage of an un-represented party, denying the truth, and allowing false statements in the motions by the U.S. Attorney to be entered into the record without personal knowledge in violation of her oath of office. The Affidavit filed in the opposition of the motion to dismiss is shown below:

United States Court of Federal Claims

Bartlett J. Hanford
Plaintiff

V
United States of America,
Defendant

Case no. 04-504L
Judge Emily C. Hewitt

Affidavit in Support of
Motion not to dismiss

AFFIDAVIT OF TRESPASS

Of Demand for Taking Judicial Notice
Under Federal Rules of Evidence Code 201(b)

State of California)
) **SS**
County of Calaveras)

I, Bartlett-Jay: Hanford, Affiant as un-represented party and being over the age of twenty one (21)is competent to testify to the facts herein based upon first hand knowledge and belief and do affirm that that the facts herein are true, correct and complete

The affiant, Bartlett-Jay: Hanford does declare the following:

1. that, Affiant presents this Affidavit as the highest form of prima facie evidence in this mater, **U.S. vs. Kis**.658 F2d. 526, 536, and;

2 that, this affiant will be the direct evidence that overwhelms the Governments's "primary evidence" of presumptions until this Affidavit is fully rebutted; and,

3. that, Affiant now presents to this court the citations of authority that are self-executing constitutional provisions that allows this court knowledge of affiant's title of full right status and not diminished by the Government's fraudulent claims that Affiant is knowing and willingly involved with Government in some form of government function; and,

4. that, self-executing constitutional provisions stand as the sufficient rule of this instant case which is effective immediately and evidences rule by which guaranteed rights are to be enjoyed or duty of government imposed and enforced, **Cleary vs. Kincaid**, 23 Idaho, 769, 131 p. 1117, 1118; **Strange vs. City of Cleavland**, 94 Ohio St.377, 114 N.E. 261, 262; and,

5. that, Affiant, "Aggrieved Party" hereby demand this Honorable Court to take Judicial Notice pursuant to rule of evidence 201 (b) of the following facts;

6. that, you Judge *judge*, have imputed knowledge of the fraud perpetrated on myself, Affiant, by the colorable, alleged Motions, of Defendants by virtue of the following:

BEST AVAILABLE COPY

A. Affidavit contained in first amended complaint.

7. that, this Aggrieved Party now respectfully notices this Honorable Court of the following facts:

A) Plaintiff had operated his exploration for nine years with rights vested from continual use of the patented mining claim for the highest and best use which congress intended. For the Defendant(s) to deny Plaintiff tools (explosives) for which Plaintiff had a clear legal right was an abuse of authority; trespass ab initio *Leger v Warren* 82 Ohio St. 500. 57 N. E. 506, 508 (1900) a denial of vested rights by the Defendant(s).

B) In an organized enterprise with the Sheriff upon the third cancellation for the magazine Inspection when it was reported the one of the defendant(s) died of a heart attack that the Defendant(s) were planning an invasion; in other words, Trespass upon my patented claim without permission in violation of vested rights by the will of intent of Defendant(s).

C) When the Sheriff said to move the magazine to the surface, the defendant(s) no longer Had any authority, if they ever had authority, the inspection became a state issue, unless the Calaveras Deputy Sheriff was a fraud i.e. saying he was qualified to inspect magazines and wasn't qualified. To detain Plaintiff his tools (explosives) for 147 days because Defendant(s) wanted to inspect my operation, when their was no compelling federal Interest was and abuse of authority trespass ab initio ibid. by Defendant(s). MSHA Agent Davis saying they had no jurisdiction at the site and the Sheriff could have Inspected the magazine.

D) Plaintiff had a mining right, property, livelihood, and liberty right, to deny Plaintiff tools (explosives) after nine years of operation for which he had a clear legal right, essential for his operation, without notice, discovery or hearing is a trespass ab initio, Ibid., of the worst kind by Defendant(s)

E) By neglect of due process of law Defendant(s) in a co-

business organized enterprise with the Calaveras County Sheriff, Plaintiff was irreversibly injured under Cal Penal Code 519 extortion, trespass ab initio Ibid., making a simple magazine inspection contingent upon inspection of Plaintiff's operation by Defendant(s).

F) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority when applying enforcement against Plaintiff in one of the several 50 states, Defendant(s) authority being Title 4 USC 72.

G) Denfendant(s) had no authority causing a trespass ab initio Ibid. abused authority without a valid contract in place between Plaintiff and Defendant(s) to deny Plaintiff explosives necessary to operate his exploration.

H) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority because there was no authority given MSHA in a memorandum of understanding Between ATF and MSHA to deny tools (explosives) necessary to operate his exporation. Plaintiff not a permittee or applicant of ATF and intra state user.

I) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority having no authority on Plaintiff's patented claim to deny Plaintiff (explosives) without a valid reservation; the Rights of Plaintiff going back to the date of location. US v Etheverrey 230 F.2nd 193.

J) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority through coercion, making veiled threats under Title 28 USC chapter 85 1359.

K) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority having knowledge of an issue of law thru a memorandum of law and failing to resolve said issue of law moving forward against Plaintiff deprived him of tools (explosives)needed to operate Plaintiff's patented claim.

L) Defendant(s) had no authority causing a trespass ab initio Ibid. abused authority denying Plaintiff tools (explosives) to operate his patented claim and denying the right to know the nature and cause of their action by a Bill of Particulars.

M) Denfendant(s) had no authority causing a trespass ab initio Ibid. abused authority needing a 4th Amendment warrant to accompany a state official in a state inspection.

Verification: I the Accused, under oath, affirm that I am competent in the testimony of the matters herein stated: and that I have personal knowledge of the facts herein stated: and I declare under the penalty of perjury that the forgoing is true, correct, complete, certain, not misleading, upon information and belief: and submitted in good faith and not in bad faith.

Dated this 1 day of July 2004

Signed:

Bartlett Hanford

JURAT NOT REPRODUCED appears with opposition of motion to dismiss.

A second disability of Judge Hewitt exist in the refusal to file a timely rehearing to her opinion by petitioner The refusal to file the rehearing objecting to her opinion was a denial of petitioners access to the court. Judge Hewitt opinion was not supported by Facts or Evidence:

a) The Judge refused to acknowledge the service of process on key officials and field agents and the willful violation/trespass upon mining/ inherent rights of petitioner and further failed to mention the five presentments made in

the form of affidavits, that was never addressed in the judges opinion for the purpose of obtaining redress for the loss of production in the administrative process that preceded this case.

b) It was a fraud in the Judge's opinion to say that the magazine was to meet federal standards. Petitioner was an INTRASTATE use of explosives no federal jurisdiction, no effectuation of substantial federal purpose. How could MSHA inspect the magazine when ATF refused to inspect because no federal jurisdiction.

c) The judge refused to allow evidence presented in Petitioner's affidavits in the complaint and the opposition of the motion to dismiss, saying MSHA wasn't involved, allowing the record to be falsified by entering evidence into the record against federal rules of evidence 602 by those with no personal knowledge. It was a fraud to say MSHA involved, when it was Peitioner's right to offer proof. " Allegations such as those asserted by Petitioner, (a pro se litigant), however in artfully pleaded are sufficient to offer supporting evidence, accordingly, although we intimate no view on the merits of Petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof." *Haines v Kemer* 404 U.S. 519, 522.

II COMPLAINT IN COURT of CLAIMS WRITTEN AS AFFIDAVIT OF NEGATIVE AVERMENT; PETITIONER HAD STIPULATED AGREEMENT AS TO FACTS of CASE INCORPORATRION 04-504L

The U.S. Attorney knows the judge is on their side. Petitioner files a complaint, the U.S.Attorney files a motion to dismiss and prints out boiler plate to support their position knowing by their status anything but outrageous will defeat all petitioners. Petitioner's complaint was an affidavit. Each cause of action, a negative averment, where Petitioner's negative affidavit became a stipulation agreement of the facts which Petitioner witnessed did not exist- therefore, there were no facts in controversy without a response point by point to the negative affidavit by the U.S Attorney. The stipulations were rejected by Judge Hewitt with her knowledge even though there was no counter affidavits by the U.S. attorney to each negative averment made by Petitioner in the case, dismissing the case, causing a valid claim to defeated. when the facts were agreed to by the U.S. Attorney. With agreement of the facts by the parties Judge Hewitt had no discretion but to rule in favor of the petitioner.

III- DUE PROCESS, FOURTH AMENDMENT CLAIMS, SUPREMACY CLAUSE CLAIMS DISMISSED BY COURT OF CLAIMS VALID FOR THE SUPREME COURT TO REVIEW.

Emily C Hewitt, Judge of the petitioner's case in the U.S court of federal claims dismissed petitioner's two due process claims, supremacy clause claim, and fourth amendment claims without prejudice saying the court was of limited jurisdiction. The supreme court has jurisdiction to review those claims.

Due Process Count 1

Petitioner's mining right was suspended having vested from nine years of mining, having obtained permits for explosives annually. Petitioner worked diligently completing 3000 feet of drifts and 600 feet of shafts and raises. The mining right cannot be taken away, as it was done by MSHA with knowledge, without a hearing to terminate the mining operation, depriving petitioner of his explosives without due process of law under the fifth amendment. *U.S. v Etcheverrey* 230 F 2nd 193: *Pennsylvania Coal Co. v Mahon*. 260 U.S. 414.

Due Process Count 2

Petitioner suffered irreversible damage from the suspension of his mining, liberty, livelihood and property right by the participation of MSHA in concert with the sheriff in an extortion plot making a simple explosive permit contingent upon inspection of the mine. Petitioner billed MSHA, but they agreed with petitioner's claim by their non-response to Petitioner's affidavits, which included accounting and an engineers report. An administrative judgment was recorded against MSHA and became binding upon MSHA, filed in the public record for over 30 days for failure to respond. No matter what vehicle Petitioner may chose, the judgment showed that **MSHA answers to NO ONE, By Neglect of due process of law, Petitioner was injured, under the fifth amendment and deny the right to petiton an Administrative agency by MSHA.**

Supremacy Clause Claim

Petitioner was an INTRASTATE user of explosives operating on patented mining claim where the rights go back to the date of location. MSHA was barred by the reservations in the patent; encumbrances, covenants and restrictions not within thereservation of the patent are barred. *Summa Corp. v. California ex rel. Lands Comm'n,*

BEST AVAILABLE COPY

466 U.S. 198 (1984). Congress permits and encourages mining Title 30 USC 22. That for MSHA to engage in extortion plot to deny Petitioner

Explosives, making an OBSTACLE for mining goes against the congressional intent of congress. Without an injunction or fourth amendment warrant there was no effectuation of a substantial federal purpose making MSHA involvement criminal having knowledge of the crimes committed against Petitioner prior to coming against petitioner. Laws which prohibit the lawful use of the sovereign property, which the supreme sovereign permits and encourages is violative of the Supremacy Clause Article VI section II. http://laws.findlaw.com/8th/973861p.html U.S. 8th Circuit Court of Appeals *SD Mining Assoc. v Jack Cole*

Fourth Amendment Claim

Petitioner was an INTRASTATE user of explosives and chose to be a sole operator until enough ore could be discovered to warrant the un-reasonable regulation of MSHA. Petitioner wasn't under the guise of MSHA, either an injunction or forth amendent was a requirement for MSHA to participate in a co-business venture with the sheriff. *Marshall v Waite* 628 F.2nd 1255 (1980)

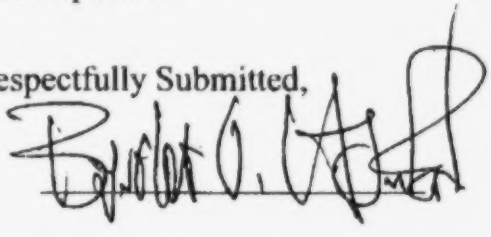
For MSHA to participate in State Search with a State Officer a Fourth Amendment Warrant is a requirement. MSHA, wilfully participated in a State Search without valid court process. *Byers v US* 273 US 313, 317 (1921)

CONCLUSION

Petitioner was allowed to offer proof in support of his claim. Judge Hewitt, allowed the record the record to be falsified, allowing those attorneys without personal knowledge to file un-sworn testimony into the record in defiance of evidence code 602 and dis- allowed the affidavit of petitioner. As a second disability of Judge Hewitt Title 28 USC 372 (c), who wanted **NO OPPOSITION** to her opinion, deceitfully drafted, refused to file petitioner timely request for rehearing in violation of petitoner's first amendment right/access to the court. Her opinion/ruling is striken/void on grounds of fraud and judicial disability with regard to evidence and Petitioner's right to present evidence/proof in the form of affidavits. Petitioner believes his other claims dismissed by Judge Hewitt, without prejudice, are reviewable by the Supreme Court. The

behavior of a errant judge cannot blemish the integrity of the court, therefore must allow Certiorari on the grounds of the affidavit to ensure uniformity of the law regarding the same. Judge Hewitt prayed on the un-represented status of the Petitioner, fully aware of the fruadulent activities of the Judicial Branch that are obvious evidence of de facto government in active, open operation of levying **mixed war** against the people of the united States to displace the lawful de jure, usurped government. MSHA is engaged in constructive treason, denying the people of the united States valuable mineral products. With a rule book two feet high, MSHA has essentially destroyed underground mining in the united States, driving mineral producers to foreign countries to avoid their wrath of impossible regulations and imposing such extreme cost to drive the cost of producing mineral beyond the market price of the metal. So many mines have closed the employees of MSHA have been reduced to gravel pit inspectors.

Respectfully Submitted,



UNITED STATES SUPREME COURT

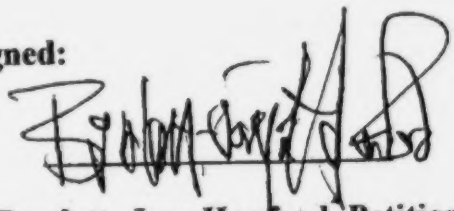
Hanford v Mine Safety and Health Administration

06-1120

CETIFICATE

The forgoing Petition for Rehearing is submitted in good faith and not for delay.

Signed:



Bartlett- Jay: Hanford, Petitioner